

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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:  
RONALD CANTOR, IVAN SNYDER and  
:  
JAMES A. SCARPONE, as TRUSTEES OF  
:  
THE MAFCO LITIGATION TRUST,  
:

Plaintiffs,

No. 97-CIV-586-KAJ

- against -

RONALD O. PERELMAN,  
MAFCO HOLDINGS INC.,  
MacANDREWS & FORBES HOLDINGS INC.,  
ANDREWS GROUP INCORPORATED,  
WILLIAM C. BEVINS and  
DONALD G. DRAPKIN,

Defendants.  
:  
-----X

**APPENDIX TO PLAINTIFFS'  
MEMORANDUM OF LAW IN OPPOSITION  
TO DEFENDANTS' MOTION TO EXCLUDE  
TESTIMONY BY PLAINTIFFS' EXPERT  
WITNESSES**

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Dated: June 22, 2006

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2 IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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4 RONALD CANTOR, IVAN SNYDER and  
JAMES A. SCARPONE, as TRUSTEES OF  
5 THE MAFCO LITIGATION TRUST,  
6 Plaintiffs,

7 -against-

Civil Action No.  
97-586  
(RRM)

8  
9 RONALD O. PERELMAN,  
MAFCO HOLDINGS INC.,  
10 MacANDREWS & FORBES HOLDINGS INC.,  
ANDREWS GROUP INCORPORATED,  
11 WILLIAM C. BEVINS and  
DONALD G. DRAPKIN,

12  
Defendants.

13 - - - - -x

14  
15 VIDEOTAPE DEPOSITION of DONALD G. DRAPKIN, taken  
16 by plaintiffs at the offices of Friedman Kaplan  
17 Seiler & Adelman, LLP 875 Third Avenue, New York,  
18 New York, pursuant to notice and agreement, on  
19 March 8, 2002, commencing at 10:10 a.m., before  
20 Jeffrey Benz, a Registered Professional Reporter  
21 and Notary Public within and for the State of New  
22 York.

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A P P E A R A N C E S:

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BY: ROBERT E. ZIMET, ESQ.

ALSO PRESENT:  
BARRY F. SCHWARTZ, Executive Vice President,  
General Counsel, MacAndrews & Forbes Holdings,  
Inc.  
MARK BRADY, Videographer

1

Drapkin

2 Exhibit 6, I would appreciate it if you would open  
3 it up to page 35. Sorry, page 36.

4 A There is no page 36 in this one. I'm  
5 sorry, you mean 36? Or -- make things easy, 37?

6 Q Oh.

7 MR. ZIMET: Page 37.

8 Q You're in Exhibit 6, and you don't have  
9 a page 36?

10 MR. ZIMET: He does.

11 A It's broken type, but the page that I  
12 think you're asking for is page 37.

13 MR. FRIEDMAN: Is your page 36 the same  
14 as this one?

15 MR. ZIMET: Go ahead.

16 Q I beg your pardon. I'm a little  
17 confused. May I take a look at the document you  
18 have? Thank you.

19 So in Exhibit 6, isn't there a page 36  
20 to which I have opened up the document?

21 A Yeah, I was having a problem, because  
22 there's broken type. It looked like 35 to me.

23 Q I see. Okay. And just so we're clear,  
24 in Exhibit 6, you see a section 4.04 that is  
25 entitled, Limitation on Debt of Marvel and its

1

Drapkin

2 Subsidiaries, and Limitation on Preferred Stock of  
3 Marvel?

4 A Yes, sir.

5 Q Do you see a provision with that same  
6 title on page 34 of Exhibit 5 and on page 32 of  
7 Exhibit 4?

8 A Yes, sir.

9 Q Are you familiar with the substance of  
10 those provisions, that is section 4.04 in each of  
11 the indentures?

12 A Generally.

13 Q And what's your understanding of what  
14 those provisions say?

15 MR. ZIMET: Objection.

16 A That there was a limitation on the  
17 amount of debt that the Marvel operating  
18 company -- that the parent company would permit  
19 the Marvel operating company to issue.

20 Q Was there also a limitation on the  
21 preferred stock that Marvel could issue?

22 A Yes.

23 Q Do you know why those provisions are in  
24 these indentures?

25 A It's my recollection that the -- the

1

Drapkin

2 underwriters felt it was necessary to market the  
3 bonds. Notes.

4 Q Did somebody tell you that?

5 A Probably.

6 Q Do you recall who?

7 A No, sir.

8 Q What do you mean by market the notes?

9 A You've previously asked me about road  
10 show. When you go on the road show, you're  
11 marketing your securities to potential buyers.

12 Q Do you recall having any discussions  
13 about the provisions in section 4.04 of each  
14 indenture, before the offering occurred?

15 A Yes, sir.

16 Q Who did you discuss these provisions  
17 with, before the offerings occurred?

18 A I can't recall specific discussions.

19 Q Do you recall general discussions?

20 A Yes, sir.

21 Q Tell me what you recall, please.

22 A That these ratios would not have any  
23 impact on Marvel.

24 Q Is that something that you said?

25 A I --

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

-----x  
RONALD CANTOR, IVAN SNYDER and JAMES A.  
SCARPONE, as TRUSTEES OF THE MAFCO  
LITIGATION TRUST,  
Plaintiffs,

-against-

RONALD O. PERELMAN, MAFCO HOLDINGS INC.,  
MacANDREWS & FORBES HOLDINGS INC.,  
ANDREWS GROUP INCORPORATED, WILLIAM C.  
BEVINS and DONALD G. DRAPKIN,  
Defendants.

-----x  
March 25, 2002  
2:00 p.m.

Deposition of HOWARD GITTIS, held at  
the offices of Friedman, Kaplan, Seiler &  
Adelman, 875 Third Avenue, New York, New  
York, before Renate Reid, RPR, a Notary  
Public of the State of New York.



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Wilmington, Delaware 19899

BY: ROBERT ZIMET, Esq.

1 Gittis

2 changes. The provision you showed me  
3 earlier and this provision were among  
4 those things that had to be changed.

5 Q. 4.04 and 4.0 --

6 A. Yes, because you couldn't do a  
7 restructuring because no one would put  
8 money up, including us, and let the  
9 majority of the stock be in here, so  
10 that's the context in which it arose.

11 Q. When you say, no one would do a  
12 restructuring and put this -- the stock  
13 in here, what are you referring to?

14 A. That's not what I said. What I'm  
15 saying is no one would put the kind of  
16 money necessary to restructure Marvel up  
17 without owning a majority of the shares  
18 free of these bond offerings; so you had  
19 to amend that provision.

20 Q. And that provision is 4.09?

21 A. Yes.

22 Q. Did you make any efforts to find

23 a source of new money for Marvel

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

RONALD CANTOR, IVAN ) No. 97-586-KAJ  
SNYDER and JAMES A. )  
SCARPONE, as TRUSTEES OF )  
THE MAFCO LITIGATION, and )  
as Successors in Interest )  
to the Marvel )  
Entertainment Group, )  
Inc., et al., )

Plaintiffs,

vs.

RONALD O. PERELMAN, et  
al.,

Defendants.

VIDEOTAPED DEPOSITION OF BEVIS LONGSTRETH  
New York, New York  
Thursday, April 13, 2006

Reported by:

PENNY SHERMAN

JOB NO. 183399

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April 13, 2006  
10:07 a.m.

Videotaped deposition of BEVIS  
LONGSTRETH, held at the offices of Skadden,  
Arps, Slate, Meagher & Flom, LLP, Four  
Times Square, New York, New York, pursuant  
to Agreement, before Penny Sherman, a  
Notary Public of the State of New York.

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A P P E A R A N C E S:

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BY: ANTHONY W. CLARK, ESQ.

-and-

BRIAN G. LENHARD, ESQ.

ALSO PRESENT:

FERNANDO ALVAREZ, Legal Video Specialist

MUKARRAM ATTARI

STEVEN L. FASMAN, ESQ.

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THE VIDEOGRAPHER: This is Tape Number 1 of the videotaped deposition of Mr. Bevis Longstreth in the matter of Ronald Cantor, Ivan Snyder, James Scarpone, as trustees of the MAFCO Litigation Trust, plaintiffs versus Ronald O. Perelman, et al. defendants, in the United States District Court for the District of Delaware. This deposition is being held at Skadden, Arps, Four Times Square, New York, New York, on April 13, 2006, at approximately 10:07 a.m.

My name is Fernandez Alvarez from the firm of Esquire Video Services. I am the legal video specialist.

The court reporter is Penny Sherman in association with Esquire Deposition Services.

Would counsel please introduce themselves.

MR. CLARK: Tony Clark and Brian Lenhard, Skadden, Arps for the defendants.

MR. FRIEDMAN: Edward Friedman with Friedman, Kaplan, Seiler & Adelman, attorneys for the plaintiffs and for the witness.

THE VIDEOGRAPHER: And would the court

1 Longstreth

2 reporter please swear in the witness.

3 B E V I S L O N G S T R E T H, called as a  
4 witness, having been duly sworn by a Notary  
5 Public, was examined and testified as  
6 follows:

7 EXAMINATION BY

8 MR. CLARK:

9 Q. State your name for the record, please.

10 A. Bevis Longstreth.

11 Q. Mr. Longstreth, you're an attorney,  
12 correct?

13 A. I am, a retired attorney.

14 Q. Did you ever practice in litigation?

15 A. Not in a litigation department.

16 Q. Okay. Have you ever been deposed or  
17 testified in court before today?

18 A. Yes -- oh, I've been deposed. I have  
19 not testified in court.

20 Q. So you're generally familiar with the  
21 process. I don't need to go through all of the  
22 detailed rules?

23 A. I am.

24 Q. Any reason why your ability to answer  
25 questions honestly, accurately and completely today

1 Longstreth

2 might be impaired?

3 A. No.

4 Q. And you're represented by Mr. Friedman,  
5 I understand that. We can take breaks whenever you  
6 wish, just not when a question is pending. And the  
7 only other caution I'll give you is that under the  
8 rules that apply in Delaware, you're not permitted  
9 to consult with Mr. Friedman or, frankly, anyone  
10 else about the substance of your testimony until  
11 the deposition has been concluded, other than if  
12 there's an issue about whether something involves  
13 privilege.

14 A. Okay.

15 Q. Now, let's talk about how you got  
16 involved in this case.

17 Who first contacted you about this  
18 litigation?

19 A. Gary Friedman.

20 Q. And when did he contact you?

21 A. I don't remember.

22 Q. Who is Gary Friedman?

23 A. He's Ed Friedman's brother and he's a  
24 corporate lawyer at the Friedman firm.

25 Q. Before being contacted by Gary Friedman,



1 Longstreth

2 did you have any knowledge of this litigation; had  
3 you ever heard of it?

4 A. No.

5 Q. Other than Gary Friedman, before being  
6 contacted about this litigation, did you know  
7 anyone else at Messrs. Friedman's law firm?

8 A. No.

9 Q. And were you then or are you now  
10 familiar with any of the plaintiffs in this case:  
11 Ronald Cantor, Ivan Snyder, James Scarpone?

12 A. No.

13 Q. If you don't recall -- if not a precise  
14 date, can you tell me --

15 A. Well, within the past year.

16 Q. Within the past year?

17 A. Yes.

18 Q. Within the past six months, would the  
19 first contact have been; it would be, you know,  
20 say, September of '05 going forward?

21 A. I can't be precise about it. Time  
22 speeds up as you get older.

23 Q. And when Mr. Friedman contacted you,  
24 what did you do; did he call you on the phone?

25 A. Yes.

1 Longstreth

2 Q. Do you recall what he told you, what he  
3 said to you in that initial contact?

4 A. Well, he said that they -- the firm was  
5 looking for an expert witness experienced in  
6 corporate governance matters and would I be at all  
7 interested in considering it and being considered.

8 Q. And was that the sum and substance of  
9 what he told you in the first call?

10 A. Yeah.

11 Q. And did you respond to his inquiry at  
12 that point?

13 A. Yeah, I did.

14 Q. And what did you tell him?

15 A. I said I like that kind of case, if I --  
16 if the merits are such that I can really support it  
17 and support the side you're on and be useful. So,  
18 I said, I can't tell you if that's the case here or  
19 not until I look at the case.

20 Q. Did he tell you anything about the  
21 substance of the case in that first contact?

22 A. Certainly that they were representing  
23 the plaintiffs' side in the case involving  
24 fiduciary duty. I don't think -- if he told me the  
25 details, I didn't register them.

1 Longstreth

2 Q. Did he disclose the parties to you so  
3 you could, you know, check and see if you had any  
4 conflicts, for example?

5 A. No.

6 Q. Did he talk to you about the specific  
7 nature and scope of the expert opinion or opinions  
8 that the plaintiffs would be seeking in the case?

9 A. No.

10 Q. Anything else that you can recall from  
11 that initial telephone call?

12 A. No.

13 Q. When is the next time you had any  
14 contact with anyone about this case after that  
15 first call with Mr. Friedman?

16 A. I think I got the copy of the opinion on  
17 appeal at that time.

18 Q. The third circuit opinion?

19 A. Yeah.

20 Q. At which time?

21 A. Well, after our conversation. And I  
22 read that. And it's possible that some of the  
23 other stuff that is listed there in my report I  
24 also got. I don't remember the sequencing of  
25 receiving all that material.

1 Longstreth

2 Q. Who did you get the third circuit  
3 opinion from?

4 A. Probably my counsel to my right here. I  
5 don't recall if I had letters from Gary, but I know  
6 I had from Ed. And so, that was the next step.

7 Q. To receive a copy of the court's opinion  
8 and perhaps other documents?

9 A. Yeah.

10 Q. Did you -- after talking to Gary  
11 Friedman on that initial call, did you -- when's  
12 the first time -- I assume there was a first time  
13 before today -- but when was the first time you  
14 talked to Ed Friedman about the case?

15 A. I don't remember. I mean, I can't...

16 Q. Shortly after the initial contact,  
17 months later, just in the last couple of weeks?

18 A. Oh, no. It was, yeah, within a space of  
19 a couple of weeks.

20 Q. Of the initial contact?

21 A. Yes.

22 Q. And tell me about that contact, that  
23 communication between you and Ed Friedman; what was  
24 the substance of that?

25 A. Well, I saw in the opinion, the

1 Longstreth

2 expertise that the judge had suggested was --  
3 would, I think in the judge's opinion, the circuit  
4 court's opinion would be useful, and I thought I  
5 could respond to that.

6 As I understood the facts, I felt that I  
7 had something to say, based on my experience and  
8 judgment, and so I was interested in being  
9 considered. And I think we had discussions as to  
10 why, what my qualifications would serve. And so  
11 we -- I discussed some of my qualifications. And  
12 Gary Friedman was at Debevoise a long time ago, so  
13 he knew me and that's probably why he called me.

14 Q. In this initial contact with Ed  
15 Friedman, did you discuss the nature of the  
16 opinions that were being sought from you as a  
17 corporate governance expert?

18 A. Well, we discussed -- I -- we didn't  
19 discuss specifics about -- I hadn't formed any  
20 conclusions at that point, so we -- we discussed  
21 the case and...

22 Q. Well, maybe the way to probably -- tell  
23 me as much as you can recall that was discussed in  
24 your initial -- was it a phone call with  
25 Mr. Friedman?

1 Longstreth

2 A. Yeah, I think it was his phone call,  
3 either with Ed and Gary or just Gary, talking about  
4 my qualifications that would be -- that would make  
5 me useful.

6 Q. Uh-huh.

7 A. I've had some experience with being an  
8 expert witness and I've turned down a number of  
9 cases after they were sent to me, because I just  
10 didn't think the merits of the case were something  
11 I could support.

12 Q. Uh-huh.

13 A. So, I've had that experience and I -- so  
14 I wanted -- I wanted to be sure that this was a  
15 case where I could render judgments that would be  
16 useful on the side I was being retained to provide  
17 expertise for. But at the same token, I wanted to  
18 be sure that the -- that they, the Friedman firm,  
19 knew what they were getting.

20 And I think most of the conversation was  
21 about their -- about my disclosing, you know, what  
22 my experience and background was.

23 Q. I appreciate that you disclosed your  
24 experience.

25 Did you discuss in this, what I

1 Longstreth

2 understand to be the second phone call, though, the  
3 type of opinion that was being sought by  
4 plaintiffs?

5 A. I think to the extent that -- I -- I  
6 think what they were looking for was someone with  
7 experience in advising boards and in serving on  
8 boards of public companies who could bring that  
9 experience to bear on how he or she would behave in  
10 the situation that this case presented.

11 Q. And was there a particular behavior that  
12 you were asked about, with respect to the board in  
13 this case, in this second phone call?

14 That is, were you asked specifically  
15 about how the board conducted itself or what you  
16 thought about how the board conducted itself or  
17 perhaps what plaintiffs' counsel felt the board  
18 should have done; anything like that?

19 A. No. What I was asked was, what would  
20 I -- under the facts of the case, if I was sitting  
21 there as an independent director, what they were  
22 seeking was my best judgment as to how I would  
23 behave.

24 Q. And did you give them any indication of  
25 the answer to that question in this second phone

1 Longstreth

2 call?

3 A. If I did, it was very tentative.

4 Q. Do you recall if you did?

5 A. No.

6 Q. Anything else you recall about that  
7 conversation?

8 A. No.

9 Q. When was the next time you spoke with  
10 anyone about the case?

11 A. Well, I don't remember that. I know  
12 we -- at some point we met. I met with Gary and  
13 with Ed.

14 Q. Well, let me ask a general question.  
15 Over the course of the past year or whatever the  
16 time frame has been, or a magnitude, do you recall  
17 how many times you have talked with people from  
18 plaintiffs' counsel on the phone about the case?

19 A. How many times?

20 Q. Yeah, or a magnitude. I know you can't  
21 be precise.

22 A. Okay. Maybe four or five times.

23 Q. And do you recall how many times you've  
24 met with plaintiffs' counsel?

25 A. Probably three times.



1 Longstreth

2 Q. And so you just don't recall when the  
3 next communication was after the second phone call?

4 A. No, I don't.

5 Q. Do you recall the substance of the next  
6 communication?

7 A. No.

8 Q. Do you recall the substance of any  
9 further communications between you and plaintiffs'  
10 counsel about this case?

11 MR. FRIEDMAN: Let me caution the  
12 witness before he answers that. We will  
13 assert an attorney-client privilege as to the  
14 substance of communications that we had after  
15 you were retained as an expert, unless we,  
16 counsel, provided information to you that is  
17 part of what you relied on in your report.

18 So, if you have any questions about  
19 privilege, we can talk before you answer, but  
20 just be sensitive to the attorney-client  
21 privilege as you answer Mr. Clark's questions.

22 MR. CLARK: Let me just ask one question  
23 about the privilege. Is this the privilege  
24 between your firm and plaintiffs or between  
25 you and the witness, who you've indicated you

1 Longstreth

2 represent?

3 MR. FRIEDMAN: It's fundamentally a work  
4 product.

5 MR. CLARK: Okay. All right. So with  
6 that in mind, could you -- I don't remember  
7 what I asked.

8 MR. FRIEDMAN: Yeah, I don't think that  
9 question was objectionable, I just wanted to  
10 make clear.

11 (The question was read.)

12 A. The substance?

13 Q. Yes.

14 A. Well, the -- essentially what was going  
15 on is, they gave me documents. I read the  
16 documents and I would come and ask questions. I'd  
17 get answers, and finally, I went off and wrote a  
18 report. So the -- during the course of our  
19 meetings, basically I was asking questions that  
20 occurred to me as a result of the documents I read.

21 Q. In any of these communications, written  
22 or oral, on the phone or in person, did anyone  
23 representing any of the plaintiffs ever express to  
24 you, in words or substance, what the opinion was or  
25 the opinions were that plaintiffs wanted from you

1 Longstreth

2 as an expert?

3 A. No.

4 Q. And in any of these communications prior  
5 to the issuance of your report, which we'll get to  
6 in a minute, did you ever tell them what your  
7 opinions and conclusions were before you issued  
8 your report?

9 A. I think I would have expressed tentative  
10 conclusions.

11 Q. When you say would have, that suggests  
12 to me that you don't really recall. Did you  
13 express --

14 A. I don't recall, because it's a  
15 continuum. I mean, from the day I get the first  
16 call to the day I submit the report -- and I'm just  
17 trying to give you a picture of the kind of  
18 conversations that we had.

19 Q. Is it your best recollection that prior  
20 to issuing your written report, you did inform  
21 plaintiffs' counsel of the substance of your  
22 conclusions and opinions?

23 A. Certainly the tendency that I was going  
24 to -- but I -- in writing the report -- and this is  
25 the way I often work -- I evolved ideas that and

1 Longstreth

2 conclusions that I had never expressed before,  
3 because I hadn't concentrated on it the way one  
4 concentrates on a brief, as I'm sure you're aware  
5 when you write your briefs.

6 Q. Okay. So if I -- let me see if I  
7 understand. You believe that you did, prior to  
8 issuing the report, express to plaintiffs' counsel  
9 at least some of the conclusions and opinions you  
10 were coming to, but your best recollection is that  
11 you probably didn't express all of the conclusions  
12 and opinions that eventually made their way into  
13 the report as it was issued; is that fair?

14 A. Yeah, definitely. Yes, that's right.

15 Q. And in any of these communications  
16 before the report was issued, did anyone from  
17 plaintiffs' counsel express back to you their views  
18 about the opinions and conclusions you were  
19 reaching?

20 A. No.

21 Q. Never once?

22 A. No.

23 Q. Never said --

24 A. They seemed to be very careful about  
25 that.

1 Longstreth

2 Q. So, no one indicated, in words or  
3 substance, that the opinions and conclusions you  
4 were coming to were beneficial to the plaintiffs'  
5 case?

6 A. Well, that's a different question you're  
7 asking me.

8 Q. I know. That's why I asked it.

9 A. Well, in the course of the whole  
10 conversations we had, I gave some sense of the  
11 process that was in the record and what I thought  
12 about it, and they gave some sense to me that if I  
13 expressed that sort of thing, it would be helpful  
14 not hurtful to them. That's why they retained me.  
15 So, I mean, in other words -- well, that's it.

16 Q. In these discussions or communications  
17 before the issuance of the report, did anyone from  
18 plaintiffs' counsel or anyone representing  
19 plaintiffs express to you that any of the  
20 conclusions or opinions you were coming to were not  
21 helpful, undesirable, anything of that sort?

22 A. Never once.

23 Q. Let's go ahead and mark the report.

24 (Longstreth Exhibit 1, Bevis

25 Longstreth's report, marked for

1 Longstreth

2 identification, as of this date.)

3 MR. CLARK: Let's mark this as

4 Longstreth 1.

5 Q. Before we get to the document itself,  
6 just let me make my record.

7 I'd like you to tell me now, in as much  
8 detail as you can, the substance of all discussions  
9 and communications prior to the issuance of the  
10 report that you had with anyone representing  
11 plaintiffs' counsel.

12 MR. FRIEDMAN: I'll permit the witness  
13 to answer that question subject to the  
14 objection that I made, which is to say, if the  
15 witness has a recollection of conversations in  
16 which we provided information that he relied  
17 on, he can testify to that.

18 Beyond that, I would object to the  
19 question because I just think it's over-broad  
20 and there may be specific questions that can  
21 elicit, you know, information along the lines  
22 of other questions Mr. Clark has asked.

23 Q. Okay. So you can answer in accordance  
24 with his instruction, but do me one favor, tell me  
25 after you're done answering as much as you think

1 Longstreth  
2 you can, given that instruction, whether or not  
3 there's information that you're not telling me, not  
4 what it is, but whether or not there's any  
5 information you're not disclosing as a result of  
6 the instruction from counsel.

7 MR. FRIEDMAN: So just let me note my  
8 objection to the form of the question. And I  
9 think there may be some need for reading back  
10 the question or clarifying it. So I'll make  
11 my objection now and then I'll not interrupt,  
12 so --

13 MR. CLARK: Look, it's a fair -- it's a  
14 fair objection, but I figure -- I think maybe  
15 we've, if not plumbed the depths, I think  
16 we've probably gone pretty far down the road  
17 of specific recall with respect to these  
18 conversations and communications for when the  
19 report got issued.

20 MR. FRIEDMAN: Right.

21 Q. I just want to know if there was --

22 A. Is this a redundant question to all the  
23 other questions you've asked?

24 Q. Yeah. I'm saying, is there anything  
25 else you can recall --

1 Longstreth

2 A. Anything else?

3 DI Q. -- about the substance of those  
4 communications that you can tell me now, and with  
5 counsel's instruction in mind?

6 A. I've asked questions, for example, about  
7 things, factual matters that I should -- that I  
8 knew at one point when I reviewed the whole record,  
9 all those documents, but I couldn't remember. For  
10 example, I would ask if the restriction on --

11 MR. FRIEDMAN: I'm going to direct the  
12 witness not to testify about specific  
13 conversations we had relating to the substance  
14 of these matters.

15 MR. CLARK: Okay.

16 MR. FRIEDMAN: Unless they were  
17 conversations in which counsel provided  
18 information that was relied on in formulating  
19 the report.

20 THE WITNESS: Yeah, well, there is no  
21 information that counsels provided me with  
22 except for the documents listed there, that  
23 I've relied upon in the report.

24 MR. FRIEDMAN: So, for example, your  
25 question would call for the witness to testify



1 Longstreth

2 about conversations that the witness and I had  
3 after the report was issued.

4 MR. CLARK: Actually, right now, I was  
5 just asking up to the time of the report.

6 MR. FRIEDMAN: Up to the -- all right.

7 MR. CLARK: And then the next question  
8 was after the report was issued.

9 Q. For now I'm limiting it up to -- it was  
10 January 12th.

11 A. There's nothing beyond what I've said,  
12 up to the time of the report.

13 MR. FRIEDMAN: And just so the record is  
14 clear, I think, when the witness was starting  
15 to answer your question before I objected, he  
16 was getting into conversations after the  
17 report was issued.

18 MR. CLARK: The answer suggested that to  
19 me, as well.

20 Q. So, there's no information from  
21 plaintiffs' counsel or any other source, for that  
22 matter, that you relied upon in forming the  
23 opinions and conclusions reflected in your report,  
24 other than as expressly disclosed in the report  
25 itself; is that fair?

1 Longstreth

2 A. That's fair. Except, let me add one  
3 thing. For some reason there was a deletion from  
4 my resume.

5 Q. We'll get to that.

6 A. Okay. Because I think it's relevant in  
7 terms of my experience.

8 Q. We're going to get to -- well, we're  
9 going to get to that fairly shortly.

10 Could you take a look at Exhibit 1, if  
11 you can identify that for us?

12 A. Yeah. This is my report.

13 Q. Now, take a look at the back of the  
14 report. You've got a number of exhibits, the last  
15 one being Exhibit C. Can you tell me what that is?

16 A. Yes. Exhibit C is a letter to me dated  
17 December 23, 2005 from Edward Friedman, and it  
18 gives me -- it really sets forth the questions that  
19 I was being asked to address.

20 Q. Now, before you got this letter --

21 A. And it also includes some facts that  
22 I'm -- was entitled to rely upon.

23 Q. I take it from your testimony that you  
24 had been in discussions with plaintiffs' counsel  
25 for at least some months before you received this

1 Longstreth

2 letter; is that fair? It's dated two days before  
3 Christmas.

4 A. I'd say I don't recall. I really don't  
5 remember whether it was one month or three months  
6 or four months.

7 Q. And before you got this letter, did you  
8 have any indication of the questions that counsel  
9 wanted answered by you as an expert?

10 A. I had a general idea, but I didn't have  
11 specific ideas.

12 Q. So this letter would have been the first  
13 specific instruction, as far as you can recall,  
14 from counsel on the questions that you were to  
15 address as an expert, correct?

16 A. Let me just make sure of something.  
17 Yeah, that's right.

18 Q. And prior to receiving this letter, the  
19 December 23, 2005 letter, is it fair to say you had  
20 formed no opinions or conclusions about the answers  
21 to be provided to these questions?

22 A. Well, I didn't know the questions.

23 Q. So is the answer to my question yes?

24 A. Yes.

25 Q. Now, Exhibit B to your report --

1 Longstreth

2 A. Yes.

3 Q. Is a list of documents. Did you receive  
4 all the documents on your list here?

5 A. Yes.

6 Q. Did you review all the documents on that  
7 list?

8 A. I looked at all the documents on the  
9 list and I -- yes.

10 Q. You didn't necessarily read every jot  
11 and tiddle in some of the thicker documents, but  
12 you fairly reviewed, to the extent you thought  
13 appropriate and necessary, everything on the list?

14 A. I did.

15 Q. And where did you get the documents  
16 from?

17 A. From the Friedman Firm.

18 Q. Did you receive any of these documents  
19 from any place other than the Friedman Firm?

20 A. No.

21 Q. And who decided which documents you were  
22 going to receive?

23 A. The Friedman Firm.

24 Q. Did you at any point ask for any  
25 particular documents or information?

1 Longstreth

2 A. Yes. I asked for the opinions that were  
3 delivered by the counsel for Marvel.

4 Q. Okay. Anything else?

5 A. That's all I can remember.

6 Q. The opinions that you asked for, they're  
7 down in the second bottom half of the page --

8 A. Yeah.

9 Q. -- dated April 22, 1993, October 20, '93  
10 and February 18, '94. Those are the opinions  
11 you're referring to?

12 A. That's right.

13 Q. Was there -- were there any documents or  
14 was there any information that you requested from  
15 counsel or anyone else bearing on this matter that  
16 you didn't receive?

17 A. I don't recall anything, no.

18 Q. Did plaintiffs' counsel or anyone else  
19 explain to you how they came up with the list of  
20 document -- how they decided what documents to show  
21 you?

22 A. No, we didn't talk about that.

23 Q. And you don't have any information on  
24 that subject in any other way?

25 A. No.

1 Longstreth

2 Q. I think I asked you this, but if I'm  
3 repeating, I'm sorry. Have you reviewed any other  
4 documents or received any other information beyond  
5 what's listed in Exhibit B that pertain to this  
6 matter?

7 A. No.

8 Q. Now, the report, who prepared this  
9 report?

10 A. I prepared it.

11 Q. Did you have any help in preparing it?  
12 I mean, for example, did you write it out longhand  
13 and somebody type it for you or do you do your own  
14 typing?

15 A. I wrote it on my IBM ThinkPad or  
16 whatever it's called.

17 Q. And I take it, there was various  
18 iterations of your report before it found its way  
19 to final form, various drafts?

20 A. There was a draft and then the final.

21 Q. Just one draft?

22 A. Just --

23 Q. So this would be -- the final is the  
24 second draft, if I can just --

25 A. That's correct.

1 Longstreth

2 Q. Okay. Did you provide --

3 A. Now, when you compose on a computer, you  
4 don't say draft number one, draft number two. You  
5 go over it. So, I think, in my experience, the  
6 advent of the computer, you probably -- this is the  
7 equivalent of more than one draft.

8 Q. I understand what you're saying. As you  
9 were preparing what you've testified to as the  
10 first draft, you would continually revise portions  
11 of it until you said, Okay, here's the first draft?

12 A. Right.

13 Q. And thereafter, when you went to work on  
14 the final, the same thing happened; you'd be  
15 revising it as you went until you said, Okay, it's  
16 done, that's fine?

17 A. That's right.

18 Q. Did you provide the first draft of your  
19 report to anyone?

20 A. Yes, I provided it to the Friedmans.

21 Q. And after providing that draft report to  
22 plaintiffs' counsel, did you have any discussions  
23 or -- I don't want to know the substance at this  
24 point -- well, I don't think I can given counsel's  
25 instruction, but -- I'd love to know the substance

1 Longstreth

2 but -- did you have discussions or communications  
3 with plaintiffs' counsel in which they provided  
4 comments on the draft?

5 A. Yes, they reacted to the draft and I  
6 listened to them and...

7 Q. And did you incorporate any of their  
8 comments or suggestions into what became the final  
9 report?

10 A. There were corrections, factual  
11 corrections, to be made.

12 Q. Anything else?

13 A. No.

14 Q. Are there any errors in the final report  
15 as issued, to your knowledge?

16 A. There's a typo.

17 Q. Ah, where's the typo?

18 A. In page 1, in the second paragraph, in  
19 the middle line beginning, Where I am.

20 Q. Yes.

21 A. Oh. Well, in my copy, I think my copy,  
22 am is -- maybe that was somehow revised.

23 Q. It is?

24 A. I mean, that looks like right, Where I  
25 am chair.



1 Longstreth

2 Q. You thought there was a typo --

3 A. I thought the word am wasn't on my  
4 draft, I mean the letter M. I thought I was being  
5 so smart. I get myself into trouble.

6 Q. Does your report, Exhibit 1, include all  
7 of your analyses and opinions related to the  
8 subject of this litigation?

9 A. Include? Would you repeat that  
10 question?

11 Q. Sure, sure. Does your report include  
12 all of your analyses and your opinions and  
13 conclusions related to the subject of this  
14 litigation?

15 A. Yes.

16 Q. And are there any conclusions or  
17 opinions that you formed with respect to this  
18 litigation that are not reflected in the report?

19 A. No.

20 Q. Did you consider whether to provide any  
21 other opinions on any issue related to the subject  
22 of this litigation that's not reflected in the  
23 report?

24 A. No.

25 Q. And did you read any other expert

1 Longstreth

2 reports prepared for this case?

3 A. Not until after I had submitted this  
4 report in final.

5 Q. After submitting this report, you did  
6 read other expert reports?

7 A. I did.

8 Q. And which ones were those?

9 A. Baliban, Carron, Fowler, some professor,  
10 Haber --

11 MR. CLARK: H-A-M-M-E-R-M-E-S-H. That's  
12 close enough.

13 A. Hammermesh.

14 Q. Any others?

15 A. That's all I can recall.

16 Q. And have you read any other documents  
17 pertaining to this matter subsequent your the  
18 issuance of this report?

19 A. Yes. I -- omitted from my resume is the  
20 first legal article I published as a lawyer in  
21 1961, and oddly enough it has bearing on this case.  
22 And I asked counsel to see if they could get it for  
23 me, because it's so old and I don't have it  
24 anymore. It was published in the Business Lawyer.

25 Q. Can you tell me what the cite or the

1 Longstreth

2 title --

3 A. It's about the ability of a subsidiary  
4 to provide its assets in support of a parent  
5 borrowing.

6 RQ MR. CLARK: I would like to have that  
7 document produced.

8 MR. FRIEDMAN: I tracked down a copy a  
9 few days ago and I will send it to you.

10 Q. Okay. So you read the expert -- after  
11 issuing the opinion in exhibit -- the report in  
12 Exhibit 1, you read the expert reports you've  
13 identified, you read the article that you had  
14 prepared in 1961; any other documents pertaining to  
15 this matter that you read subsequent to issuing  
16 your report?

17 A. No.

18 Q. And I think this is obvious from your  
19 prior testimony, but I'll ask it directly anyhow.

20 In the opinions reflected in your  
21 report, you're not relying on the views of any  
22 other experts, are you?

23 A. No, I'm not.

24 Q. Now, your CV, Exhibit A to the report,  
25 you've indicated a few minutes ago that there was

1 Longstreth

2 something missing. Was it the article? Is that --

3 A. No.

4 Q. Not something else?

5 A. The article I responded because you  
6 asked if I'd read anything.

7 Q. Uh-huh.

8 A. Yes. I served for six or seven years,  
9 from around 1993 to 2000, on the board of a New  
10 York Stock Exchange listed corporation out of  
11 Dallas called Capstead Mortgage Corporation,  
12 C-A-P-S-T-E-A-D. And that got dropped from my CV  
13 inadvertently, I guess because I'm no longer on  
14 that board.

15 Q. Other than that correction or that  
16 addition, is your curriculum vitae accurate?

17 A. It was accurate. It's now complete.

18 Q. Accurate and complete. Right. Okay, so  
19 with that addition, we can rely on Exhibit A to  
20 your report for all of your professional  
21 credentials and your publications, plus the 1961  
22 article, right?

23 A. Yes.

24 Q. Capstead.

25 A. Right.

1 Longstreth

2 Q. What was the business?

3 A. Capstead is a mortgage REIT, a real  
4 estate investment trust.

5 Q. And you were --

6 A. The chairman of the -- I have to deviate  
7 from your line of questioning to tell you that the  
8 chairman of the audit committee of this company  
9 throughout my tenure as a director, was Harriet  
10 Myers.

11 Q. Almost Supreme Court Justice Harriet  
12 Myers.

13 A. She was an outstanding board member, and  
14 despite my efforts with the press, this was never  
15 published anywhere, neither by the republicans or  
16 the democrats.

17 Q. I suspect that it fell into the category  
18 of dog bites boy. If you added some more color to  
19 it you might have got it in the press.

20 A. Yeah, I know.

21 Q. Well, you just answered by correcting.

22 Is that only instance -- well, first of  
23 all, you were what you would consider to be an  
24 independent director of Capstead?

25 A. Absolutely.

1 Longstreth

2 Q. And is that the only instance in which  
3 you have served as an independent director of a  
4 public U.S. company?

5 A. Yes.

6 Q. Any other service as a director of a  
7 public company, i.e. a non-U.S. public company?

8 A. Well, I've been on the board of  
9 Investcap for a long time, and I'm on the board of  
10 the CREF, College Retired Equity Fund. Of course,  
11 that's not a public company, although we behave  
12 like one.

13 Q. Have you had any experience as a  
14 director or manager or employee of any company  
15 operating in the entertainment business?

16 A. As a director or manager?

17 Q. Director, manager or employee.

18 A. No.

19 Q. And have you ever had any experience as  
20 a director, manager or employee of any company  
21 operating in the comic book business?

22 A. No.

23 Q. Trading card business?

24 A. No.

25 Q. Sticker business?

1 Longstreth

2 A. No.

3 Q. So would it fair to say that you don't  
4 have any basis and experience to assess the  
5 financing needs of those types of businesses?

6 A. That's fair.

7 Q. Or you don't have any basis and  
8 experience to assess the best alternatives for  
9 financing those kinds of businesses?

10 A. I wouldn't say that. I would say that  
11 if adequately informed, the general judgments I  
12 have about the world of corporations would give me  
13 enough information to render a useful judgment.

14 Q. Let me put it this way.

15 Do you consider yourself an expert in  
16 the area of financing for entertainment, comic  
17 book, trading card or sticker businesses; is that  
18 part of your expertise?

19 A. Not the way you've limited it, no. But  
20 my whole career has been based upon doing  
21 finance -- doing legal work for financings of every  
22 conceivable kind.

23 Q. Right. You are -- you do consider  
24 yourself to be an expert in your areas of the law?

25 A. Yes. And the areas of business that the

1 Longstreth

2 areas of law, I'm an expert in, touch.

3 Q. So as a lawyer, did you represent any  
4 entertainment businesses?

5 A. No.

6 Q. Same question. Did you ever represent  
7 any comic book businesses, trading card businesses  
8 or sticker businesses as a lawyer?

9 A. No.

10 Q. So you don't have any personal  
11 experience assessing the best alternatives for  
12 financing those sorts of businesses, correct?

13 A. That's right. No special expertise  
14 about that.

15 Q. Now, I think you alluded to this, but  
16 have you ever testified -- you have testified at  
17 deposition before, you told me that. Have you ever  
18 testified as an expert witness before?

19 A. In court?

20 Q. In deposition or at trial.

21 A. In deposition, yes.

22 Q. How many times?

23 A. Twice.

24 Q. Can you tell me each of those  
25 situations, what was it about?



1 Longstreth

2 A. Roughly, yeah. One was for an expert  
3 witness representing PaineWebber in a securities  
4 public offering where I was an expert on securities  
5 laws, the 1933 Act, in particular.

6 And the other case was involving a trust  
7 company in a case where imprudence in money  
8 management was alleged. And I was an expert on the  
9 standards of fiduciary behavior that applied to  
10 money management companies.

11 Q. And in both of those cases, you did  
12 provide deposition testimony; is that correct?

13 A. Depositions.

14 Q. Do you recall when these cases were?

15 A. Well, one -- the trust one was probably  
16 12 years ago and the --

17 Q. Early '90s?

18 A. And the securities case was probably 15  
19 years ago.

20 Q. Late '80s?

21 A. Yeah.

22 Q. Have you ever been retained as an expert  
23 in litigation where you weren't called upon to  
24 testify?

25 A. Yes.

1 Longstreth

2 Q. How many times?

3 A. Oh, where I was actually retained?

4 Q. Yes.

5 A. Not where I was sought to be retained  
6 and turned down?

7 Q. Correct.

8 A. Probably four times, four or five times.

9 Q. By who, when -- give me the same level  
10 of general detail as you gave the others.

11 A. Okay. I may -- I may not be able to.

12 Q. Would this be as a consulting expert?

13 A. Always as an expert witness with the  
14 expectation that this would go to trial.

15 Q. And it didn't?

16 A. And it didn't.

17 Q. And you didn't have to go?

18 A. I didn't even get deposed.

19 Q. Sure, okay. Go ahead and give me --

20 A. All right. The most recent was  
21 involving an Oklahoma company called CFS, a huge  
22 fraud in Oklahoma. And I represented -- I didn't  
23 represent anybody. I was an expert witness for the  
24 plaintiffs in that case suing Chase Morgan and  
25 Mayor Brown. And I was called upon to give expert

1 Longstreth

2 testimony as to the meaning of a 10(b)5 opinion in  
3 a 144A transaction, in a series of 144A  
4 transactions.

5 Q. Okay. Before you go on to the others,  
6 can I just ask you, did any of these matters where  
7 you served as an expert before, to your knowledge,  
8 go to trial and judgment?

9 A. This case was settled after a one day --  
10 what do you call these things, mini-trials or...

11 Q. Oh, oh, a mock trial?

12 A. Mock trial.

13 Q. Right, right. And how about the  
14 PaineWebber or the trust company case; did those go  
15 to trial, do you know?

16 A. I don't think either one went to trial.

17 Q. Okay. So you never testified in court  
18 as an expert?

19 A. Never.

20 Q. So, the ones where you didn't testify at  
21 all, CFS was one. You said there were maybe three  
22 or four. Can you recall the others?

23 A. Yes, there was a case -- I was retained  
24 by a dissident part of the Hearst family to be an  
25 expert witness in a case involving the dissident

1 Longstreth

2 against the trust that controlled the Hearst  
3 empire. And I was also retained as a consultant.  
4 And I -- in that case --

5 Q. Is this -- are we talking about the same  
6 case?

7 A. Yes. I mean, what I am getting at is, I  
8 never got to an expert report.

9 Q. I see.

10 A. But I did write -- I came up with ideas  
11 for how to settle this family matter.

12 Q. Okay. And what was the -- if there was  
13 one, what was the crux of the case; what was the  
14 issue?

15 A. Well, the crux of the case was that  
16 the -- that the -- there were entrenched managers  
17 who were mismanaging the empire and treating the  
18 family like trash.

19 Q. Okay. So it was entrenchment and  
20 mismanagement of the trust?

21 A. Yes.

22 Q. Those were the issues you were advising  
23 on?

24 A. Yes.

25 Q. Any others? Any other matters you can

1 Longstreth

2 recall where you were retained as an expert?

3 A. I was retained by the Bank of America in  
4 a lawsuit by Wirehauser (phonetic) against Bank of  
5 America for mismanagement of their pension funds.  
6 And in that case, I don't remember if I rendered an  
7 expert report, but I know we had a mini-trial.

8 Q. And you testified -- you talked to  
9 the --

10 A. I did. I presented my thoughts at that  
11 mini-trial, one-day trial. It resulted in -- it  
12 was before a lawyer who was chosen as sort of an  
13 arbitrator -- mediation, I guess it's called. And  
14 the case was settled right there on the spot.

15 Q. And any others that you recall where you  
16 were retained as an expert?

17 A. I was retained as an expert witness in a  
18 case involving Behr, B-E-H-R, Paint Company, which  
19 has a sole -- used to have a sole supply contract  
20 to Home Depot. If you go to Home Depot, that's the  
21 paint you'll buy.

22 Q. Is that what the case involved?

23 A. I was retained as an expert in money  
24 management and fiduciary behavior, and I don't  
25 remember much about the case.

1 Longstreth

2 Q. Any other cases where you were retained  
3 as an expert?

4 A. Not that I can recall. Which is not to  
5 say there wasn't any, but --

6 Q. No, no, I appreciate that.

7 A. I just -- they're fuzzy.

8 Q. I just want to run back through these  
9 four to get an idea of when these matters were.  
10 CFS, when would that have been?

11 A. CFS was settled last year. That's the  
12 most recent.

13 Q. 2005. The Hearst matter?

14 A. Oh, eight years ago.

15 Q. Late '90s?

16 A. Yeah, late '90s.

17 Q. Bank of America?

18 A. Fifteen years ago.

19 Q. 1990-ish. Behr Paint?

20 A. Around the time of the Bank of America  
21 case.

22 Q. Around '90, okay.

23 Before this engagement in this case, the  
24 Cantor case, had you ever been retained as an  
25 expert to evaluate or consider the actions of a

1 Longstreth

2 public company's board in connection with a  
3 financing transaction?

4 A. No, not that I can recall.

5 Q. Now, when -- I think I've already asked  
6 this. You don't recall when you began to work on  
7 this case, do you?

8 A. No. We -- not precisely.

9 Q. Sometime in the past 12 months?

10 A. Yeah, within the past 12 months.

11 Q. Well, between whenever you began to --  
12 you agreed to be retained, you were retained and  
13 you started work. Between then, whenever that was,  
14 and January 12, when you issued your report, do you  
15 know how many hours you spent working on the  
16 assignment?

17 A. I can't recall the number of hours.

18 Q. Did you keep time records of your work?

19 A. Yes. Yes, I did.

20 Q. Did anyone else assist you in your work,  
21 other than, you know, you got information from  
22 plaintiffs' counsel?

23 A. No. I have a secretary and an office at  
24 Debevoise for life, but I have no associate help  
25 anymore. It would have been nice, but I didn't.